

111TH CONGRESS
1ST SESSION

H. R. 2241

To provide for the settlement of certain claims against Iraq by victims
of torture and terrorism.

IN THE HOUSE OF REPRESENTATIVES

MAY 4, 2009

Mr. SESTAK introduced the following bill; which was referred to the
Committee on the Judiciary

A BILL

To provide for the settlement of certain claims against Iraq
by victims of torture and terrorism.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Equitable Compensa-
5 tion for American Victims of Torture Act of 2009”.

6 **SEC. 2. JUSTICE FOR VICTIMS OF TORTURE AND TER-**
7 **RORISM.**

8 (a) FINDINGS.—The Congress finds the following:

9 (1) During the Gulf War against Iraq in 1991,
10 Americans serving in the United States Armed

1 Forces were captured, became Prisoners of War
2 (POWs), and were subsequently tortured, beaten,
3 starved, hooked to electrical shock devices, and sub-
4 jected to other horrendous acts by Saddam Hus-
5 sein's regime.

6 (2) CBS News reporter Bob Simon and cam-
7 eraman Roberto Alvarez were kidnapped while on
8 assignment during the 1991 Gulf War and were held
9 and tortured, along with the American POWs.

10 (3) Following the Iraqi invasion of Kuwait in
11 August 1990, many United States citizens were de-
12 tained by Iraq, beaten, subjected to cruel, inhumane
13 and degrading treatment, confined under deplorable
14 conditions, and used as "human shields" for the
15 avowed purpose of preventing the United States and
16 its coalition allies from using military force to lib-
17 erate Kuwait.

18 (4) At the time these acts occurred, the Depart-
19 ment of State had classified Iraq as a state sponsor
20 of terrorism.

21 (5) The brave American POWs and American
22 civilian hostages have suffered long-term physical,
23 emotional, and mental damage as a result of this
24 brutal, state-sponsored torture and terrorism.

1 (6) When the American POWs returned home
2 after the Gulf War ended, they were given a hero's
3 welcome by then Secretary of Defense Dick Cheney,
4 who told them, "Your country is opening its arms to
5 greet you".

6 (7) During the 1991 Gulf War, the Congress
7 unanimously passed resolutions condemning the bru-
8 tal treatment by the Government of Iraq of captured
9 United States service members, demanding that the
10 Government of Iraq abide by the Geneva Convention
11 regarding the treatment of prisoners of war, and
12 stating an intention to hold Iraq accountable for the
13 torture of American POWs.

14 (8) In 1996, Congress passed an amendment to
15 the Foreign Sovereign Immunities Act (FSIA) provi-
16 sions of title 28, United States Code, so that torture
17 victims like the American POWs and the American
18 "human shield" victims from the Gulf War could
19 seek compensation for their injuries from terrorist
20 countries, including Iraq.

21 (9) On April 4, 2002, 17 Gulf War POWs and
22 their families filed claims in the United States Dis-
23 trict Court for the District of Columbia seeking com-
24 pensation for damages related to their torture and
25 abuse by the Government of Iraq. The POWs in-

1 cluded Colonel Clifford Acree, USMC (Ret.); Lieu-
2 tenant Colonel Craig Berryman, USMC (Ret.);
3 Former Staff Sergeant Troy Dunlap, U.S. Army;
4 Colonel David Eberly, USAF (Ret.); Lieutenant
5 Colonel Jeffrey D. Fox, USAF (Ret.); Chief War-
6 rant Officer 5 Guy Hunter, USMC (Ret.); Sergeant
7 David Lockett, U.S. Army; Colonel H. Michael Rob-
8 erts, USAF; Colonel Russell Sanborn, USMC; Cap-
9 tain Lawrence Randolph Slade, USN (Ret.); Major
10 Joseph Small, USMC (Ret.); Staff Sergeant Daniel
11 Stamaris, U.S. Army (Ret.); Lieutenant Colonel
12 Richard Dale Storr, Air National Guard; Lieutenant
13 Colonel Robert Sweet, USAF; Lieutenant Colonel
14 Jeffrey Tice, USAF (Ret.); Former Lieutenant Rob-
15 ert Wetzel, USN; and Former Commander Jeffrey
16 Zaun, USN.

17 (10) In 2003, after the Government of Iraq re-
18 peatedly refused to participate in arbitration on the
19 damage claims, and after hearing evidence of how
20 the former POWs had been repeatedly tortured, a
21 judge awarded them a judgment for damages, stat-
22 ing that “detering torture of POWs should be of
23 the highest priority”.

24 (11) Despite this ruling, the POWs and their
25 families have not received payment, and are unable

1 to further pursue their claims in United States
2 courts because of the waiver that was granted for
3 Iraq by the President under authority established in
4 the National Defense Authorization Act for Fiscal
5 Year 2008.

6 (12) In December 2001, after conducting an
7 evidentiary hearing, the United States district court
8 held, in *Hill v. Republic of Iraq*, that Iraq was liable
9 for having taken United States citizens hostage fol-
10 lowing the Iraqi invasion of Kuwait and subse-
11 quently awarded 180 of those former hostages and
12 their spouses a judgment for damages.

13 (13) On March 20, 2003, on the eve of Oper-
14 ation Iraqi Freedom, the President of the United
15 States directed that all of the judgments that had
16 been awarded in *Hill v. Republic of Iraq* be paid
17 from moneys held in blocked Iraqi accounts.

18 (14) On that same date, the President issued
19 an Executive order confiscating all remaining
20 blocked assets of Iraq and ordering them to be de-
21 posited into the United States Treasury to be used
22 for Iraq reconstruction.

23 (15) The claims of more than 200 United
24 States citizens who, at the same time and in the
25 same manner as the *Hill* plaintiffs, were held hos-

1 tage in territory occupied by Iraq are currently
2 pending in a United States district court in the case
3 of *Vine v. Republic of Iraq*.

4 (16) The plaintiffs in *Vine v. Republic of Iraq*
5 have not been compensated and are unable to en-
6 force any judgment they may obtain in United
7 States courts because of the waiver that was granted
8 for Iraq by the President under authority established
9 in the National Defense Authorization Act for Fiscal
10 Year 2008.

11 (17) Article 131 of the Third Geneva Conven-
12 tion relative to the Treatment of Prisoners of War
13 (August 12, 1949) prohibits the United States as a
14 party to that treaty from absolving the Government
15 of Iraq of any liability incurred due to the torture
16 of prisoners of war, such as the American POWs re-
17 ferred to in this section.

18 (18) The United States has a moral obligation
19 to protect its past, present, and future members of
20 its Armed Forces, and all United States citizens,
21 from torture and hostage-taking, and the Congress
22 is committed to holding state sponsors of terrorism
23 accountable for such horrendous acts.

24 (b) RESOLUTION OF CERTAIN CLAIMS AGAINST
25 IRAQ.—

1 (1) ADEQUATE SETTLEMENT OF CERTAIN
2 CASES.—Unless the claims in the cases referred to
3 in paragraph (2) have been adequately settled before
4 the end of the 30-day period beginning on the date
5 of the enactment of this Act, then, upon the expira-
6 tion of that 30-day period, the waiver authority
7 granted to the President in section 1083(d) of the
8 National Defense Authorization Act for Fiscal Year
9 2008 (Public Law 110–181; 122 Stat. 343), and
10 any waiver granted before the end of that 30-day pe-
11 riod under such authority, shall terminate.

12 (2) CASES.—The cases referred to in paragraph
13 (1) are cases numbered 99:00CV03346 (TPJ),
14 1:01CV02674 (HHK), CIV.A. 02–632 (RWR) (July
15 7, 2003), 1:03CV00691 (HHK), 1:03CV00888
16 (HHK), and No. 03–0215 (JDB), in the United
17 States District Court for the District of Columbia.

18 (3) ADEQUATE SETTLEMENT.—For purposes of
19 paragraph (1), adequate settlement means payment
20 by the Government of Iraq, or payment by a United
21 States depository institution pursuant to an unquali-
22 fied and unconditional guarantee made by such de-
23 pository institution, of at least the following
24 amounts to the following persons:

25 (A) To any person—

1 (i) whose claim in the applicable case
2 referred to in paragraph (2) arose from an
3 act of hostage taking or from being held in
4 hostage status, and

5 (ii) who has not obtained a judgment
6 on the claim before the date of the enact-
7 ment of this Act,

8 \$150,000, plus \$6,000 for each day the person
9 was held as a hostage, but in no event more
10 than \$900,000.

11 (B) To any person—

12 (i) whose claim in the applicable case
13 referred to in paragraph (2) arose from an
14 act of hostage taking or from being held in
15 hostage status,

16 (ii) who, while a hostage, was sub-
17 jected to torture, and

18 (iii) who has not obtained a judgment
19 on the claim before the date of the enact-
20 ment of this Act,

21 \$2,500,000, plus \$6,000 for each day the per-
22 son was held as a hostage.

23 (C) To a plaintiff in the applicable case re-
24 ferred to in paragraph (2) who is the spouse or
25 was at the time the claims arose, or child of

1 any person who qualifies for receipt of payment
2 under paragraph (1) or (2), one-third of the
3 amount that such person qualifies for receipt
4 under such paragraph.

5 (D) To any person who, before the date of
6 the enactment of this Act, obtained a judgment
7 for compensatory damages in a case referred to
8 in paragraph (2) (regardless of whether such
9 judgment was subsequently vacated)—

10 (i) payment of the unsatisfied amount
11 of such judgment, in an amount that is the
12 lesser of \$1,000,000 or the unsatisfied
13 amount of the award; and

14 (ii) if the amount of the judgment ex-
15 ceeds \$1,000,000, one-third of the
16 unsatisfied amount of such excess.

17 (4) DEFINITIONS.—In this section:

18 (A) HOSTAGE.—The term “hostage”
19 means an individual in hostage status or an in-
20 dividual seized or detained in the commission of
21 an act of hostage taking.

22 (B) HOSTAGE STATUS.—The term “hos-
23 tage status” has the meaning given that term
24 in section 599C(d)(1) of the Foreign Oper-
25 ations, Export Financing, and Related Pro-

grams Appropriations Act, 1991 (Public Law 101–513).

(C) HOSTAGE TAKING.—The term “hostage taking” has the meaning given that term in section 1605A(h)(2) of title 28, United States Code.

(D) PERSON.—The term “person” includes the legal representative of a claimant’s estate.

(E) TORTURE.—The term “torture” has the meaning given that term in section 3 of the Torture Victim Protection Act of 1991 (28 U.S.C. 1350 note).

(F) UNITED STATES.—The term “United States” means the several States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(G) UNITED STATES DEPOSITORY INSTITUTION.—The term “United States depository institution” means a depository institution organized under the laws of any State, the District of Columbia, or the United States, including a branch or agency of a foreign depository institution.

(c) ADDITIONAL PROVISIONS.—

1 (1) CONSTRUCTION OF APPROPRIATIONS ACT
2 PROVISION.—Section 1503 of the Emergency War-
3 time Supplemental Appropriations Act, 2003 (Public
4 Law 108–11; 117 Stat. 579), and any exercise of
5 authority by the President pursuant to such section
6 1503, was never intended to and did not provide for
7 the removal of jurisdiction over cases brought under
8 section 1605(a)(7) of title 28, United States Code.

9 (2) CONSTRUCTION OF NDAA PROVISION.—Sec-
10 tion 1083(d) of the National Defense Authorization
11 Act for Fiscal Year 2008 (Public Law 110–181; 122
12 Stat. 343), and any waiver exercised by the Presi-
13 dent pursuant to such section 1083(d), was never in-
14 tended to and did not provide for the removal of ju-
15 risdiction over cases brought under section
16 1605(a)(7) of title 28, United States Code.

17 (3) APPLICABILITY OF NDAA PROVISION.—Not-
18 withstanding any other provision of law, section
19 1083(c) of the National Defense Authorization Act
20 for Fiscal Year 2008 (Public Law 110–181; 122
21 Stat. 342) shall apply, beginning on the date of the
22 enactment of this Act, to the cases referred to in
23 subsection (b)(2) of this section, notwithstanding
24 any waiver of that provision with respect to Iraq.

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